

events. The most striking examples of this reality are 1.) the disciplining of Phillip Aguilar (Glendale Findings, para. 149-51, 159-163); 2.) the Community Brace incident (Glendale Findings, para. 209-21); and 3.) the decision to forgive the debt of the party which purchased the Odessa station (Glendale Findings, para. 102, 224). In each of these situations, Paul Crouch clearly dictated the course of events with little or no input from the minority directors. Moreover, the fact remains that the vast majority of important decisions in the history of NMTV were either made without consulting the directors or were routinely rubberstamped by the directors without any evidence of independence. The few instances that are claimed to establish the independence of the directors cannot overcome the overwhelming evidence to the contrary.

#### 4. TBF's Defense Is Based On Flawed Legal Premises

47. The legal framework of TBF's defense in this case is largely premised on an attempt to reargue matters that have already been resolved in the HDO rather than on an analysis of the facts of this case. In fact, as noted, the merits of the law established in the HDO are not appropriately reconsidered in this context. Those aspects of TBF's legal defense that do not consist of attempts to reargue matters resolved in the HDO are in large premised on its imaginary "policy", discussed in Section I(A)(1) above, pursuant to which it contends that

group owners are permitted an extraordinary degree of involvement in minority-controlled licensees.

a. The Role of De Jure Rights in Assessing  
De Facto Control

48. First, TBF at numerous points in its findings relies upon the argument that, irrespective of what has actually transpired, significance should be accorded to the fact that the directors of NMTV possess the theoretical de jure right to adopt a different course should they choose to do so. This, however, is merely a new formulation of Trinity Broadcasting Network/NMTV's pre-designation position that the only pertinent basis for assessing NMTV's ownership is its de jure constitution. The HDO clearly rejected that proposition, holding that both de jure and de facto control must be considered. No issue was specified as to de jure control, but only as to de facto control. The mere fact that the directors of NMTV might possess the theoretical right to take certain actions is thus of little relevance to the resolution of the issue actually specified. What is relevant is the extent to which the directors have either exercised, demonstrated an ability to exercise, or demonstrated a propensity to exercise whatever hypothetical de jure "control" they might arguably possess. The record reflects that they have indeed never exercised such rights, would lack the ability to do so, and have never exhibited a propensity to do so.

b. Indicia of Control Considered Separately  
Rather Than as Part of the Whole  
Situation

49. Second, TBF's legal analysis is largely premised on taking each indicator of control separately and citing precedent for the proposition that that indicator standing alone would not support a finding of de facto control. The HDO, however, stated at para. 14:

The types of activities listed in footnote 8, upon which NMTV seeks a declaratory ruling, have been found to be individually acceptable to the Commission in the context of specific factual situations. However, the facts that are before us compel us to consider the whole situation, including the types of activities referenced in footnote 8, in order to determine whether the relationship between TBN and NMTV constitutes de facto control.

(Emphasis added). TBF ignores this holding of the HDO and rather seeks to revive the eclectic approach of considering each indicator separately that was rejected by the HDO.

50. The weakness of TBF's position is illustrated by its reliance on Seven Hills, supra, a case that involves superficial similarities with the present case in that it concerned allegations that a network exercised de facto control of an affiliate licensee, which the Review Board ultimately resolved in favor of the licensee. TBF cites Seven Hills for the proposition that its network arrangements are not indicative of de facto control. Of course, it is true that the mere fact that NMTV is an affiliate of Trinity Broadcasting Network's network does not constitute in itself

proof of de facto control. Neither the Commission nor anyone else has ever suggested such a proposition. TBF's reliance on it is thus a red herring that obscures significant differences between Seven Hills and the instant case when all of the various indicators of control are viewed as a whole.

51. A primary distinction between this case and Seven Hills is the absence of credibility concerns in Seven Hills, as discussed above. Apart from that, however, the Board in Seven Hills found that the allegedly controlling network played no direct role in the operations of the licensee. Seven Hills, para. 64, 64 RR 2d at 299. That must be contrasted not only with the extensive involvement of Trinity Broadcasting Network in the operations of NMTV but also with its presence on the NMTV board of directors. A primary issue in Seven Hills was whether one principal of the licensee was in fact merely an agent of the network. The Board found, however, that he was both a substantial individual in his own right and had been found to be a candid witness. Seven Hills, para. 61, 63, 64 RR 2d at 298-99. Finally, because of the unique circumstances of that case, the Board found that the burden of proof was properly placed not on the licensee but on its accusers. Seven Hills, para. 23, 64 RR 2d at 284-85. The Board suggested that a different result might have ensued had the burden been on the licensee to prove "by a preponderance of the record evidence" the absence of excessive influence.

Seven Hills, para. 63, 64 RR 2d at 299. In this case, the burden of proof is squarely placed on TBF, Trinity Broadcasting Network and NMTV. HDO, para. 54. Thus, the mere fact that the Board in Seven Hills did not find a network to have controlled its affiliate does not dictate the same result here.

c. Elusiveness of the Concept of De Facto Control

52. Third, TBF relies on the proposition that even if Trinity Broadcasting Network did control NMTV, the significance of this should be minimized due to the elusive and uncertain nature of the concept of de facto control. TBF Findings, Section III(A)(2)(b). While there certainly may be cases where the existence of de facto control is difficult to determine or arises from a mere technicality in agreements between parties, this is not such a case.

53. The cornerstone of TBF's argument in this regard is that it should not be faulted because:

. . . the minority ownership policy under which NMTV acquired the Odessa and Portland stations was intended by the Commission to encourage experienced group owners like TBN to become involved in the development of minority enterprises like NMTV by providing them with substantial managerial, technical and financial assistance and exercising significant influence through the maintenance of cognizable interests. Yet at the same time neither that policy nor the Commission's Rules provided any clear guidance concerning the extent to which the group owner could permissibly provide such assistance without implicating the Commission's de facto control guidelines.

TBF Findings, para. 653. Of course, the reason the Commission never provided such guidance is that the Commission never adopted the "policy" imagined in the above statement, as discussed above. The policy in fact adopted by the Commission and as applied in the licensing of NMTV's stations contemplated only that Paul Crouch as an individual would have the degree of influence commensurate with the posture of a noncontrolling director. The Commission never adopted any policy or took any other action contemplating that Trinity Broadcasting Network -- as a legal entity or as an organization -- would have any role in NMTV whatsoever.

54. TBF next relies on the claim that ascertaining control is particularly difficult in the case of nonprofit, nonstock corporations. TBF Findings, para. 654. The HDO at para. 32 expressly rejected the claim that a basis exists for distinguishing nonprofit, nonstock corporations from "for-profit" corporations in terms of the Commission's de facto control factors. Again, TBF is merely seeking to reargue the designation order. Moreover, even if there are cases where the locus of control of a nonprofit, nonstock corporation may be difficult to identify, this is not one of them. It has been the claim of Trinity Broadcasting Network/NMTV that NMTV is controlled by its board of directors and particularly by the minority members thereof who constitute the de jure

majority and not by Trinity Broadcasting Network. The truth or falsity of this claim involves no conceptual complexity.

55. TBF next asserts that the concept of control is made more complex because of the religious nature of Trinity Broadcasting Network/NMTV. Thus, it is argued that it is the practice in the religious community for larger churches to "sponsor" smaller, newly established churches. TBF Findings, para. 655. This is a wholly irrelevant consideration. The fact that a party may be in the habit of engaging in conduct in its nonbroadcast activities that would not be permitted of a broadcast licensee obviously does not justify that party's ignoring the Commission's requirements in the context of its activities as a broadcast licensee. What this argument amounts to is a plea that TBF should be given special treatment because of its religious status; however, such preferential treatment would be clearly unconstitutional as will be seen.

56. Ultimately, while there may be cases in which determining the existence of de facto control gives rise to conceptual difficulties that might be relevant to the ultimate resolution of the issue, that is not the situation in this case. Here, Trinity Broadcasting Network's control of NMTV was blatant and pervasive. As the Bureau properly concludes:

. . . TBN was not merely the benevolent sponsor of NMTV. Nor was NMTV an independent entity. Rather, TBN was NMTV. . . . The reality of the TBN and NMTV relationship

was well known to Crouch, Duff, Juggert, and May. All must be charged with knowledge that TBN had actual working control over NMTV.

Bureau Findings, para. 302 (emphasis in original). The misconduct of Trinity Broadcasting Network/NMTV cannot be dismissed as a technical violation of an obscure requirement.

d. Constitutional Argument

57. TBF also interposes an argument asserting that a finding of de facto control would violate its right to the free exercise of religion. TBF Findings, para. 673 et seq. This case has nothing whatsoever to do with free exercise of religion but concerns only a violation of a general Commission requirement. It is well-settled that sectarian licensees are subject to enforceable public interest obligations that might not be otherwise applicable in view of the unique status of a broadcast licensee as a public trustee. King's Garden, Inc. v. FCC, 498 F.2d 51, 30 RR 2d 258, 268 (D.C. Cir. 1974) cert. denied 419 U.S. 996 (1975) (King's Garden). TBF's argument is premised on its treating the licensee entities as churches. The Court in King's Garden, however, held that:

A religious sect has no constitutional right to convert a licensed communications franchise into a church. A religious group, like any other, may buy and operate a licensed radio or television station. . . . But, like any other group, a religious sect takes its franchise 'burdened by enforceable public obligations.' . . .

30 RR 2d at 269.



58. The Court in King's Garden affirmed the Commission's application to religious licensees of EEO requirements that precluded discrimination on the basis of religion, notwithstanding a provision in the Civil Rights Act that exempted religious employers from the general ban on religious discrimination. The Court relied in part on its concern that the exemption in the Civil Rights Act was itself of questionable constitutionality. It noted that:

In creating this gross distinction between the rules facing religious and non-religious entrepreneurs, Congress placed itself on collision course with the Establishment Clause. Laws in this country must have a secular purpose and a 'primary effect' which neither advances nor inhibits religion."

30 RR 2d at 262. Here, a finding that Trinity Broadcasting Network/NMTV violated de facto control policies of general applicability would involve a purely secular purpose and would not in any way inhibit religion. What TBF is really seeking is not neutrality on the part of the government but special treatment based solely on its religious status exempting it from requirements otherwise applicable to all licensees. For the reason articulated in King's Garden, such special treatment would breach the wall of neutrality in violation of the Establishment Clause. The fact that TBF is forced to rely upon such a patently specious plea for a religious exemption from the Commission's Rules can only be viewed as an admission of the patently specious nature of its entire case.

5. The Facts Concerning NMTV's Operations  
Establish Trinity Broadcasting Network's  
Control

59. The record demonstrates that Trinity Broadcasting Network has always exercised actual working control of NMTV based on all pertinent indicia of control. This is demonstrated in both Glendale's and the Bureau's Findings. Only a few additional comments are warranted, since most of TBF's claims have already been refuted.

a. Programming

60. TBF expounds at length concerning the extent of local production and minority programming at the NMTV Portland station. TBF Findings, para. 181-85. As noted, the record does not contain evidence to support a conclusion that the Portland station broadcast any greater degree of minority programming than might be expected under Commission programming policies. In any event, the significant fact that emerges from TBF's lengthy narrative is the virtual absence of any control and direction by the NMTV board. Thus, at the beginning of paragraph 182 of TBF's Findings, we are told that Jane Duff briefed Jim McClellan as to "NMTV's plans" for a studio and local programming in 1989. Later in the paragraph, TBF identifies board meetings which touched upon the Portland studio and programming; however the first such meeting was not until 1990, well after "NMTV's plans" had apparently been formulated by somebody. Moreover, the board's involvement as

reflected in the meetings discussed by TBF amounted to little more than receiving reports as to events that had already transpired or were in progress. In the preceding paragraph (181), TBF notes the purported disagreement at the December 1988 meeting as to the appropriate offer to be made for the Portland studio (\$400,000 or \$500,000) discussed above. We are later told, however, that NMTV actually ended up spending over one million dollars on the studio. TBF Findings, para. 184. Obviously, therefore, the December 1988 meeting did not constitute the final decision as to the amount to be spent on the Portland studio. There is no indication as to how that decision was ultimately made. In sum, TBF's own characterization of the record at para. 181-85 of its findings does not reflect that the Portland studio and programming -- however meritorious -- were the product of any corporate decision by the NMTV board.

61. No matter how much minority programming was broadcast by the Portland station, it is irrelevant to the control issue unless it can be shown to be the result of an independent action of the NMTV board. Article III(1)(A) of the NMTV bylaws specifies that "the business and affairs of the corporation shall be managed" by the NMTV board. TBF Exhibit No. 101, Tab D, p. 2 (emphasis added). It is evident that the board did not perform this function with the respect to the fundamental issue as to the Portland studio facilities

and programming. As it stands, the record doesn't clarify how the extent of studio facilities and programming in Portland was decided or by whom. In fact, since the decisions clearly weren't made by NMTV, it can only be concluded that they were made by Trinity Broadcasting Network, which in any event was footing the bill for whatever was decided.

62. It should also be borne in mind that the record reflects that the Portland station by the fall of 1992 was broadcasting three local programs. One of these was subject by contract to control by Trinity Broadcasting Network. Glendale Findings, para. 120-21. A second was subject to Trinity Broadcasting Network "guidelines". Glendale Findings, para. 123. The format employed was essentially the same as that employed at other Trinity Broadcasting Network stations. Glendale Findings, para. 127. Moreover, this programming was developed under the direction of Jim McClellan, a longstanding Trinity Broadcasting Network employee who had shifted to NMTV when the need arose for a manager in Portland. Glendale Findings, para. 311. Apart from this programming, the programming broadcast by Portland consisted of Trinity Broadcasting Network programming.

b. Personnel

63. TBF also provides at para. 188 of its Findings a digest of references relating to personnel at NMTV board meetings. This again reflects a virtual absence of serious

efforts on the part of the board to manage the "business and affairs of the corporation" as required by Article III(1)(A) of the bylaws. Rather, the board's role was largely limited to being told what had already been decided by someone else.

64. There is, for instance, no evidence that the board ever determined the size and composition of the staff to be hired by NMTV. It merely received a report as to what staff had in fact been hired in Portland. Anomalously, the board did approve the hiring of a production assistant in Portland (concerning which, see Glendale Findings, para. 122). Why then did it never otherwise consider or approve the overall staffing structure of NMTV? Obviously, those decisions were not made by the NMTV board, as contemplated by the bylaws.

65. There is also no evidence that the board ever set or even considered the salaries to be paid NMTV employees, again with one anomalous exception -- it approved a housing allowance for Jim McClellan. Again, if it were pertinent for the board to approve that relatively minor expense, why did it never otherwise consider or approve compensation paid to NMTV employees? There is also no evidence of board involvement in setting the terms and conditions of employment except for setting a "formal" policy of reimbursing employees' business expenses. This has reference to a spontaneous remark by Phillip Aguilar that was made in ignorance of the fact that there already was a policy of making such reimbursement.

Glendale Findings, para. 180. Moreover, if it was pertinent to "formalize" this particular policy, why were no other policies governing employees similarly "formalized"?

66. It is also asserted that the board "supported" the creation of a minority Advisory Committee in Portland at its January 14, 1992 meeting and that E.V. Hill "recommended" one individual for membership on that Committee. As of the date of Jim McClellan's written testimony, November 8, 1993, no committee had been formed and the person suggested by E.V. Hill was deceased. TBF Exhibit No. 109, p. 31. Of course, no consideration has ever been given to electing a Portland minority to the NMTV board.

67. In sum, the NMTV board played a minimal role in the area of personnel. It clearly failed to perform its managerial duty assigned by the bylaws.

c. Finances

68. TBF also provides at para. 214 of its Findings a digest of references to finances that occurred at NMTV board meetings. This digest again reflects that the board's role was essentially limited to approving decisions already made by others. There is an absence of any evidence that the board ever developed a budget to govern NMTV's operations. It merely approved reports concerning past operations. Reference is again made to the purported disagreement over the offer to be made for the Portland studio (\$400,000 or \$500,000). As

noted, NMTV ultimately spent over twice as much on the studio; however, no board action approving the additional expenditures is reflected. Reference is also made in the last paragraph on page 159 of TBF's findings to the fact that the board approved the sale of Odessa for one million dollars whereas it was in fact sold for \$650,000. There is no evidence of board approval for this reduced price. TBF alleges that there was "board consensus" as to the reduced price based on a cursory statement by Jane Duff at Tr. 2223 that lacks any details as to how the "board consensus" was arrived at. The vague claim cannot be credited.

69. Reference is also made to an action by the board on January 14, 1992 determining that NMTV's debt should be paid off in five years. In fact, Jane Duff initially devised a plan that differed from the five year plan authorized by the board; however, she sought no authorization to modify the board's plan. (MMB Exhibit No. 399; Tr. 1445-48). No formal plan was, however, implemented until almost a year later when on January 1, 1993, a note to Trinity Broadcasting Network was executed. There is no evidence of board approval of that note. The note provides for repayment of \$5,030,442 in five years; however, the terms are not clearly specified in the note. As it has been implemented, NMTV has made modest monthly payments that will still leave \$3,410,172.47 unpaid at the end of five years. There is no evidence as to how NMTV

plans to repay this amount, suggesting that it will ultimately be dependent upon Trinity Broadcasting Network's either renegotiating or forgiving the debt. In any event, the board's January 1992 determination to pay off NMTV's debt in five years amounted to little more than a pious hope that Jane Duff felt free to ignore. See generally Glendale Findings, para. 258-59.

70. In sum, TBF's own digest of the board's actions in the area of finances reflects the marginal, passive nature of its involvement. It again failed to discharge the managerial duties assigned to it by the NMTV bylaws.

d. The Outside Directors

71. TBF is forced to acknowledge in its findings that the outside directors of NMTV were woefully lacking in even the most basic knowledge concerning NMTV's operations. It seeks to mitigate this serious deficiency by depicting the outside directors as "big picture men" who did not feel it was incumbent upon them to be involved in "little picture" matters. For instance, Phillip Aguilar is characterized as an individual who "focused on ideals and concepts rather than details." TBF Findings, para. 129. Indeed, Phillip Aguilar viewed himself as being not merely a "big picture man" but a "major big picture man". Glendale Findings, para. 176.

72. The problem with this attempt to mitigate the adverse inferences that are in fact warranted by the pervasive



ignorance of the NMTV outside directors is that if one has no understanding of the "little picture" one cannot meaningfully function even as a "big picture man". Simply put, the outside directors of NMTV lacked the minimum tools necessary to discharge the task assigned them by Article III(1)(A) of the bylaws to manage the business and affairs of the corporation. As a result, they were unable to intelligently assess matters set before them for their consideration. In the rare instances where they had the spark of an independent idea -- such as David Espinoza's concern about local programming at Odessa, the proposal to hire an independent minority counsel, E.V. Hill's suggestion concerning a minority advisory committee in Portland or the proposal to retire the NMTV debt in five years -- there was no follow up to ensure that the original intent was implemented, with the result that the ideas were ignored or subverted in their implementation by Jane Duff, who was obviously acting to further Trinity Broadcasting Network's agenda, not that of the outside directors.

73. Many "visions" of the outside directors apparently never made it beyond the stage of a vision. For instance, at para. 103 of its Findings, TBF proposes that it be found that David Espinoza "dreameed" about NMTV broadcasting Spanish language programming. The record reflects, however, that he never did anything about it. Indeed, there is no evidence

that the possibility of broadcasting Spanish language programming was ever even considered by NMTV. Doubtless, David Espinoza recognized that the most he could do was "dream", since whether or not it ever actually happened was entirely up to Paul Crouch and Trinity Broadcasting Network.

e. Jane Duff

74. TBF urges that Jane Duff performed managerial duties in connection with NMTV's operations. It also asserts that her managerial duties at NMTV differed from those she performed on behalf of Trinity Broadcasting Network. Neither proposition is disputed; however, this does not support the conclusion asserted at para. 64 of TBF's Findings that the difference in Jane Duff's role at Trinity Broadcasting Network and her role at NMTV "is the difference between being an employee and being the owner." Thus, being a manager is not the same as being an owner. There are many owners who in fact delegate all but the most basic licensee responsibilities for station operations to hired general managers. Moreover, comparing Jane Duff's role at Trinity Broadcasting Network and her role at NMTV is comparing apples with oranges. Trinity Broadcasting Network and its affiliates have been the licensee of 11 to 12 full power stations and numerous low power stations in this country, the operator of broadcast stations in other countries and the operator of a national television/cable television network. Conversely, NMTV has,

for all practical purposes, never been more than the licensee of a single full power station and a handful of low power stations.<sup>7</sup> The fact that Jane Duff may discharge a higher level of management function for NMTV does not mean that her responsibilities are measurably greater in quality than those attached to her lower level function in Trinity Broadcasting Network's much larger and more diverse organization.

75. It is also evident that Jane Duff's role with NMTV was much more limited than it has been depicted. Thus, Trinity Broadcasting Network -- not Jane Duff -- assumed primary responsibility for the engineering and low power activities of NMTV. See Section II(A)(16) of Glendale's Findings. Trinity Broadcasting Network also handled NMTV's financial, accounting and payroll functions. Glendale Findings, para. 261. Moreover, the day-to-operations of the Portland station were conducted by an experienced former Trinity Broadcasting Network employee, Jim McClellan. In a very real sense, Jane Duff discharged those duties she did perform within the context of a protective Trinity Broadcasting Network cocoon.

76. One aspect of an "owner" that Jane Duff ultimately lacks is final accountability for the licensee's station.

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<sup>7</sup> Although NMTV was at one point the licensee of both the Odessa and Portland stations, throughout most of this period the Odessa station was merely a caretaker operation pending its sale.

Thus, if an owner fails, it will typically follow that his/her station will fail. If Jane Duff fails, however, it is evident that Trinity Broadcasting Network remains to bail out the station. Moreover, unlike a true owner, Jane Duff has obviously never had to worry about money. Thus, there is no basis in the record for finding that Jane Duff's managerial responsibilities at NMTV lend support to the conclusion that she is an owner rather than a management-level employee.

6. A Conclusion That NMTV Abused The Commission's Processes By Claiming Unwarranted Low Power Preferences Is Warranted

77. TBF, and also the Bureau, urge that Trinity Broadcasting Network/NMTV should not be found to have abused the Commission's processes by claiming unwarranted preferences in its applications for low power facilities. Thus, it is urged in this respect that the Rules governing the low power preferences were in fact premised solely on an applicant's de jure ownership so that there would be no violation of such Rules even if the applicant's de jure ownership was not consistent with its de facto control. This contention is, however, patently inconsistent with the Commission's holding in the HDO. At para. 38 thereof, it is unambiguously stated:

Thus, if TBN and/or Paul Crouch controlled NMTV from the outset and that fact had been disclosed, NMTV would not have been entitled to minority preferences in numerous LPTV lotteries.

In urging to the contrary, TBF and the Bureau are in effect seeking reconsideration of the HDO which, as noted, is not permissible at this stage of the proceeding.

78. The underlying basis for the position of TBF and the Bureau rests on the failure of the Commission to specifically indicate that it would not award preferences based on fraudulent ownership schemes. It is, however, suggested that there is no need for the Commission to expressly indicate in each instance that a party claiming an entitlement under the Commission's Rules must have a bona fide basis for its claim. In RKO General, Inc. (WXA-H-FM), 4 FCC Rcd 4679, 66 RR 2d 1162 (Rev. Bd. 1989), the Board disqualified an applicant for being the undisclosed real-party-in-interest of LPTV applications filed in the name of his family members. That case accurately reflects the Commission's desire to avoid fraudulent LPTV applications and preference claims. Even Colby May acknowledged that in order to claim the low power minority preference, the directors being relied upon had to be bona fide directors "in more than name only". Tr. 3110. It would be impossible to assume that the Commission had intended to authorize frauds upon the Commission unless there were express language so indicating, which obviously there is not. Indeed, it is a patent absurdity to even imagine the Commission taking such an action.

79. TBF also urges at para. 687 of its Findings that:

When NMTV was formed in 1980, TBN and NMTV obviously could not have intended to subvert the underlying intent of a lottery process that would not even exist until three years later.

While this might seem logical, the record nonetheless establishes that Trinity Broadcasting Network/NMTV in fact did form an intent to claim a minority preference three years prior to its actual adoption. As indicated by Paul Crouch:

I don't recall any specific conversation, I think it was just well-known to all of us that the original purpose of TTI, later National Minority, was that if and when the Commission ever did through its policies create this preference that it certainly would be claimed and apparently this now is the case.

Tr. 2613. Obviously, one cannot apply the logic of parties which seek to honor the Commission's Rules to parties such as Trinity Broadcasting Network/NMTV which scheme to extract an unwarranted advantage from the Commission's Rules.

80. It should finally be noted that Trinity Broadcasting Network/NMTV also claimed an unwarranted low power diversification preference arising from the fact that Paul Crouch controlled his wife's interest as a director of Trinity Broadcasting Network, increasing his interest to more than 50 per cent. Glendale Findings, para. 48, 54. Moreover, this cannot be dismissed as relating solely to de facto control

since it was in substantial respects de jure by virtue of a proxy given to Paul Crouch by his wife.

7. The Misconduct Of Trinity Broadcasting Network/NMTV Is Not Mitigated By Reliance On Counsel

81. TBF places principal reliance on the contention that Trinity Broadcasting Network/NMTV can avoid the impact of any unlawful control since they relied upon counsel. TBF Findings, para. 657-61. Its argument in this respect is largely premised on its contention that de facto control was an elusive concept during the pertinent time period because the Commission had adopted a policy allowing group owners such as Trinity Broadcasting Network to provide "substantial assistance" to entities such as NMTV but had failed to clearly define the degree of permissible involvement. TBF Findings, para. 656. As discussed in Section I(A)(1), however, the Commission never adopted the policy imagined by TBF. Rather, this case is a conceptually uncomplicated case involving the blatant control of one party by another.

82. In assessing whether reliance on counsel can be viewed as a mitigating factor, it is initially necessary to determine whether there in fact was reliance on counsel. With respect to the claim of the low power preferences, the record in fact establishes that Paul Crouch had always intended to claim such preferences, well prior to any advice from Colby May, as noted above. With respect to the claim to the

minority exception to the 12 station multiple ownership limit,  
Paul Crouch testified:

but I do recall one thing, I told Mr. May very explicitly, I said, if we go for this and he did make it very clear to me that I believed we were the very first applicant to approach the Commission for this exception. And I said, we're plowing new ground, new territory here and I said, put everything on the record, make it clear to the agency what the relationship between TTI and Trinity Broadcasting is, divulge everything, put everything on the record, file it with the Commission. If they pass on it and approve it, fine, our goal was to acquire as many stations and network affiliates as we possibly could.

Tr. 2674 (emphasis added). It is evident from this testimony that Paul Crouch was in fact aware that NMTV's entitlement to the exception was uncertain. It also establishes that Paul Crouch knew how to resolve such uncertainty -- by putting all of the facts before the Commission and obtaining a ruling. Given this knowledge, no legitimate claim can be made that Paul Crouch merely relied upon counsel, which he clearly recognized to be a less than dispositive means of establishing compliance with Commission requirements. Of course, what Paul Crouch knew should have been done was not in fact done. The applications filed by NMTV are on their face models of nondisclosure. The only conclusion that can be drawn is that Paul Crouch voluntarily chose to hide behind an opinion of counsel that allowed him to do what he wanted to do notwithstanding that he knew that the only way to achieve



certainty was to disclose all the facts to the Commission and await its ruling.<sup>8</sup>

83. It is also necessary to assess whether reliance on counsel would be reasonable under the circumstances. A principal consideration in this respect is the relative sophistication of the party claiming to have relied on counsel. An experienced broadcaster with significant business experience has a lesser basis for claiming reliance on counsel than others. For instance, in RKO General, Inc. (KFRC), 5 FCC Rcd 3222, 3224 (Para. 24) (1990), the Commission stated:

Zingale, an experienced broadcaster, who knew that the Commission had strict processing rules for LPTV, made no effort to determine whether the use of powers of attorney was appropriate.

Indeed, in its discussion of the issues against Glendale, TBF at para. 709 of its findings cites the following language from RKO General, Inc. (WAXY-FM), 4 FCC Rcd 4679, 4684 (para. 29) (Rev. Bd. 1989):

As an experienced businessman and broadcaster, Gardner cannot avoid the consequences of his wrongful conduct on the excuse that he did not know what divestiture meant.

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<sup>8</sup> As discussed above, later in his testimony Paul Crouch sought to backtrack from his testimony at Tr. 2674 after he became aware through further questioning of the adverse inferences that would arise. The attempt by Paul Crouch to revise his testimony at Tr. 2674 is, however, not credible.